IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

Crl.MC.No. 370 of 2007()

AGAINST THE ORDER DATED 02/02/2007 IN CRMP 84/07 IN ST.2037/2004 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVUR

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PETITIONER/ACCUSED:

B. AJAYAKHOSH, ADVOCATE
M.D. PROFESSIONAL,
K.T.M. COMPLEX
CHANGANASSERRY, PIN 686 101.

BY ADV. SRI.JOHN VARGHESE
SRI.K.S.SAJEEV KUMAR

RESPONDENTS/COMPLAINANT & STATE:

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1. K.K. SAHADEVAN, KANDACHANTHARA
PALLAM P.O., KOTTAYAM.

2. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 370 of 2007

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Dated this the 14th day of February, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. The complaint was filed as early as in 2004. The matter is now at the stage of evidence. The petitioner filed an application to forward the cheque to the expert for opinion. The application was opposed. The learned Magistrate was thus called upon to exercise his discretion under Section 254(2) Cr.P.C. It is by now trite that the discretion under Sect 254(2) Cr.P.C. has to be exercised judicially bearing in mind all the relevant inputs. It is the duty of the Magistrate to ensure that he does not exercise his discretion merely for the purpose of contributing to the delay for the disposal. Therefore the learned Magistrate must have considered the request carefully.

2. The notice of demand was not replied to. The dishonour was not on the ground that the signatures vary. There is no dispute that the cheque is drawn on a cheque leaf issued to the petitioner by his bank to operate his account. The learned Magistrate also appears

to have compared the admitted signatures with the signature in the cheque also.

3. The impugned order is an interlocutory order and not amenable to the revisional jurisdiction of this Court in view of the bar under Section 397 (2) Cr.P.C. The law frowns upon challenge against interlocutory orders and thus retardation of the progress of the trial in prosecutions. The short question that I am called upon to consider is whether the extra ordinary inherent powers are liable to be invoked to interfere with the impugned order. I do not come across any circumstance which would justify such invocation of the extra ordinary inherent jurisdiction.

4. This Crl.M.C. is hence dismissed. The dismissal of this petition will not in any way fetter the rights of the petitioner to challenge the impugned order along with the final order to be passed in the prosecution, if such challenge be necessary. At any rate, the exercise of discretion by the learned Magistrate at this stage cannot be held to be so faulty as to justify the invocation of the powers under Section 482 Cr.P.C.

(R. BASANT)
Judge

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